

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.H. by and through G.H. and L.C., both
individually, and on behalf of the
MICROSOFT CORPORATION
WELFARE PLAN, and on behalf of
similarly situated individuals and plans,

Plaintiff,

v.

MICROSOFT CORPORATION
WELFARE PLAN and MICROSOFT
CORPORATION, *et al.*,

Defendants.

CASE NO. C17-1889-JCC

ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to

confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: the administrative record regarding Plaintiff’s request for coverage of Wilderness Therapy, which includes Plaintiff’s medical records and references to Plaintiff’s health status; any other administrative records or medical records of members of the putative class. These documents are “Confidential Health Information” that is protected from disclosure by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

Confidential Health Information shall include, but is not limited to, claim data, claim forms, grievances, appeals, or other documents or records that contain any patient health information required to be kept confidential under any state or federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R. §§ 164.501 & 160.103), and the following subscriber, patient, or member identifiers:

- a. names;
- b. all geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;
- c. all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;
- d. telephone numbers;
- e. fax numbers;
- f. electronic mail addresses;
- g. social security numbers;

- h. medical record numbers;
- i. health plan beneficiary numbers;
- j. account numbers;
- k. certificate/license numbers;
- l. vehicle identifiers and serial numbers, including license plate numbers;
- m. device identifiers and serial numbers;
- n. web universal resource locators (“URLs”);
- o. internet protocol (“IP”) address numbers;
- p. biometric identifiers, including finger and voice prints;
- q. full face photographic images and any comparable images; and/or
any other unique identifying number, characteristic, or code.

“Confidential” material shall also include: information regarding administration of the health plan at issue, company trade secrets or competitive and strategic initiatives, which are not generally known and which the party or non-party normally would not reveal to third parties or would cause third parties to maintain in confidence; accounting information, tax, or securities records; income statements, balance sheets, or documents that otherwise describe, contain, or disclose commercially sensitive internal company information; records required to be maintained confidentially by any contract or agreement, including with any non-party; and customer or client lists.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure manner
7 that ensures that access is limited to the persons authorized under this agreement and which is
8 consistent with the terms of HIPAA.

9 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
10 ordered by the Court or permitted in writing by the designating party, a receiving party may
11 disclose any confidential material only to:

12 (a) the receiving party’s counsel of record in this action, as well as employees
13 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

14 (b) the officers, directors, and employees (including in house counsel) of the
15 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
16 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
17 designated;

18 (c) experts and consultants to whom disclosure is reasonably necessary for
19 this litigation, including any mediators or arbitrators and their staff, and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the Court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the duplication of
23 confidential material, provided that counsel for the party retaining the copy or imaging service
24 instructs the service not to disclose any confidential material to third parties and to immediately
25 return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
4 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
5 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this agreement;

7 (g) the author or recipient of a document containing the information or a
8 custodian or other person who otherwise possessed or knew the information.

9 Any individual to whom CONFIDENTIAL information is disclosed pursuant to this
10 section must maintain the confidentiality of this information.

11 4.3 Filing Confidential Material. Before filing confidential material or discussing or
12 referencing such material in court filings, the filing party shall confer with the designating party
13 to determine whether the designating party will remove the confidential designation, whether the
14 document can be redacted, or whether a motion to seal or stipulation and proposed order is
15 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
16 standards that will be applied when a party seeks permission from the Court to file material
17 under seal.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
20 or non-party that designates information or items for protection under this agreement must take
21 care to limit any such designation to specific material that qualifies under the appropriate
22 standards. The designating party must designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify, so that other portions of the
24 material, documents, items, or communications for which protection is not warranted are not
25 swept unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
2 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
3 unnecessarily encumber or delay the case development process or to impose unnecessary
4 expenses and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated
6 for protection do not qualify for protection, the designating party must promptly notify all other
7 parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form: (*e.g.*, paper or electronic documents
13 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
15 contains confidential material. If only a portion or portions of the material on a page qualifies for
16 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
17 making appropriate markings in the margins).

18 (b) Testimony given in deposition or in other pretrial proceedings: the parties
19 and any participating non-parties must identify on the record, during the deposition or other
20 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
21 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
22 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
23 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
24 confidential information at trial, the issue should be addressed during the pre-trial conference.

25 (c) Other tangible items: the producing party must affix in a prominent place
26 on the exterior of the container or containers in which the information or item is stored the word

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
2 the producing party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the designating party’s
5 right to secure protection under this agreement for such material. Upon timely correction of a
6 designation, the receiving party must make reasonable efforts to ensure that the material is
7 treated in accordance with the provisions of this agreement. Correction is timely if made within
8 fifteen (15) days of discovery of the failure to designate.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
13 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the
15 original designation is disclosed.

16 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
17 regarding confidential designations without court involvement. Any motion regarding
18 confidential designations or for a protective order must include a certification, in the motion or in
19 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
20 conference with other affected parties in an effort to resolve the dispute without court action. The
21 certification must list the date, manner, and participants to the conference. A good faith effort to
22 confer requires a face-to-face meeting or a telephone conference.

23 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
24 intervention, the designating party may file and serve a motion to retain confidentiality under
25 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
26 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those

made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the Court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

1 When a producing party gives notice to receiving parties that certain inadvertently
2 produced material is subject to a claim of privilege or other protection, the obligations of the
3 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
4 provision is not intended to modify whatever procedure may be established in an e-discovery
5 order or agreement that provides for production without prior privilege review. The parties
6 agree that entry of this protective order constitutes a non-waiver order under Fed. R. Evid. 502(d)
7 as set forth herein.

8 10. NON TERMINATION AND RETURN OF DOCUMENTS

9 Within 60 days after the termination of this action, including all appeals, each receiving
10 party must return all confidential material to the producing party, including all copies, extracts
11 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
12 destruction.

13 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
14 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
16 work product, even if such materials contain confidential material.

17 The confidentiality obligations imposed by this agreement shall remain in effect until a
18 designating party agrees otherwise in writing or a court orders otherwise.

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 DATED this 5th day of September, 2018.

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23 PURSUANT TO STIPULATION, IT IS SO ORDERED

24 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
25 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding
26 in any other court, constitute a waiver by the producing party of any privilege applicable to those

1 documents, including the attorney-client privilege, attorney work-product protection, or any other
2 privilege or protection recognized by law.

3 DATED this 6th day of September 2018.

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7 John C. Coughenour
8 UNITED STATES DISTRICT JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on September 6,
7 2018 in the case of *A.H. by and through G.H. and L.C., both individually, and on behalf of the*
8 *MICROSOFT CORPORATION WELFARE PLAN, and on behalf of similarly situated individuals*
9 *and plans, v. MICROSOFT CORPORATION WELFARE PLAN; and MICROSOFT*
10 *CORPORATION*, Case No. C17-01889 JCC. I agree to comply with and to be bound by all the
11 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
12 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
13 promise that I will not disclose in any manner any information or item that is subject to this
14 Stipulated Protective Order to any person or entity except in strict compliance with the provisions
15 of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court for the
17 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
18 Order, even if such enforcement proceedings occur after termination of this action.

19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

22 Signature: _____